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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

RODE PEREZ-PEREZ,

Defendant.

Case No. 2:18-cr-82-KJD-GWF

**GOVERNMENT'S MOTION FOR
ADDITIONAL TIME WITHIN WHICH
TO RESPOND TO DEFENDANT'S
MOTION TO DISMISS (ECF 17)**

(First Request)

The United States of America, by and through its undersigned counsel, hereby requests that the time within which it must respond to Defendant's Motion to Dismiss Based on Prior Unlawful Deportation (ECF 17) be extended until Friday, May 25, 2018. The additional time requested is to allow the United States to receive and review audio recordings of the underlying immigration hearing, which will be dispositive as to the issues raised in the defendant's motion.

Procedural Background

Defendant filed a Motion to Dismiss on May 7, 2018. ECF 17. The United States' response is due today, May 21, 2018. The Court has set a hearing on the matter for June 8, 2015.

ECF 21. The additional time requested by the United States would still allow the hearing to go forward as scheduled. This the first request for an extension of time within which to file a response motion.

Basis For Request

The defendant's motion is premised on alleged due process defects in the defendant's removal proceeding on March 21, 2012. Specifically, the defendant alleges that he was not informed by the Immigration Judge of his right to request to voluntarily depart pursuant to 8 U.S.C. § 1229c(a). Further, the court's failure to inform him of the option, even if the court elected to exercise its discretion and deny the request for voluntary departure, invalidates the defendant's waiver of his appeal rights from this hearing.

The United States does not dispute that the defendant was eligible for prehearing, voluntary departure under Section 1229c(a). The question appears to be whether voluntary departure was in fact raised by the Immigration Judge during the March 21, 2012 Removal Proceedings. The record of the Removal Proceedings contained in the A file is akin to a minute order from this Court. *See* ECF 17, Exhibit B. The records are silent as to this issue. Therefore, to determine whether the Immigration Judge discussed voluntary departure with the defendant, the United States has requested the audio recordings of the hearing. The United States anticipates that those recordings will be dispositive as to the defendant's motion.

The United States has been diligent in requesting these records. As we learned this afternoon, the US Immigration and Customs Enforcement employee who receives requests has been on extended leave. The US Attorney's Office has been told that it will receive the records of the Removal Proceedings tomorrow, May 22, 2018. The additional time requested would allow

1 counsel to review the recordings, provide them to defense counsel, and make a determination as
2 to the merits of the defendant's claim.

3 **Conclusion**

4 For the reasons set forth above, the United States requests that the time within which it
5 must file its response to Defendant's Motion to Dismiss Based on Prior Unlawful Deportation
6 (ECF 17) be continued through May 25, 2018.

7 Dated: May 21, 2018

8 Respectfully submitted,

9 DAYLE ELIESON,
10 United States Attorney

11 */s/ Kathryn C. Newman*

12 KATHRYN C. NEWMAN
13 Assistant United States Attorney

14 **PROPOSED ORDER**

15 IT IS HEREBY ORDERED that the Government shall have through and until May 25,
16 2018, to file its response to Defendant's Motion to Dismiss (ECF 17).

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19 UNITED STATES MAGISTRATE JUDGE

20 DATED: 5-23-2018